

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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| LUIS OSARIO, | : | |
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| Petitioner, | : | Civ. No. 15-7835 (RBK) |
| | : | |
| v. | : | |
| | : | MEMORANDUM AND ORDER |
| MR. KIRBY, Warden, et al., | : | |
| | : | |
| Respondents. | : | |
| | : | |

Petitioner is a federal prisoner currently incarcerated at F.C.I. Fairton in Fairton, New Jersey. He is proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Previously, this matter was administratively terminated as petitioner had failed to pay the \$5.00 filing fee or submit an application to proceed *in forma pauperis*. Subsequently, petitioner has filed a motion to reopen that includes a complete application to proceed *in forma pauperis*. Petitioner's motion to reopen will be granted as will his application to proceed *in forma pauperis*.

In his motion to reopen, petitioner seeks to add two exhibits to his petition. (*See* Dkt. No. 3 at p. 7-12) The Court will consider these two exhibits as part and parcel of petitioner's habeas petition.

The proper sole respondent in this case is Mr. Kirby, who is the warden of F.C.I. Fairton. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004). Therefore, the petition will be dismissed with prejudice as to respondent Mr. Dempsey.

In accordance with Rule 4 of the Rules Governing Section 2254 Cases, applicable to § 2241 cases through Rule 1(b) of the Rules Governing Section 2254 Cases, this Court has

screened the petition for dismissal and determined that dismissal without an answer and the record is not warranted.

Therefore, IT IS this 8th day of December, 2015,

ORDERED that petitioner's motion to reopen (Dkt. No. 3) is granted and the Clerk shall reopen this case; and it is further

ORDERED that petitioner's application to proceed *in forma pauperis* is granted; and it is further

ORDERED that the habeas petition is dismissed with prejudice as to respondent Dempsey; and it is further

ORDERED that the Clerk shall serve a copy of the petition (Dkt. No. 1 & Dkt. No. 3 p. 7-12) and this Order upon respondent Kirby by regular mail, with all costs of service advanced by the United States; and it is further

ORDERED that the Clerk shall forward a copy of the petition (Dkt. No. 1 & Dkt. No. 3 p. 7-12) and this Order to the Chief, Civil Division, United States Attorney's Office, at the following email address: USANJ-HabeasCases@usdoj.gov; and it is further

ORDERED that within forty-five (45) days of the date of the entry of this Order, respondent shall file and serve an answer which responds to the allegations and grounds in the petition and which includes all affirmative defenses respondent seeks to invoke; and it is further

ORDERED that respondent shall file and serve with the answer certified copies of all documents necessary to resolve petitioner's claim(s) and affirmative defenses; and it is further

ORDERED that within forty-five (45) days of receipt of the answer, petitioner may file a reply to the answer; and it is further

ORDERED that within seven (7) days of petitioner's release, be it parole or otherwise, respondent shall electronically file a written notice of the same with the Clerk.

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge